

## CALIFORNIA ENERGY COMMISSION

JOHN L. GEESMAN, COMMISSIONER

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June 27, 2005

Mr. Robert Finkelstein, Executive Director  
Toward Utility Rate Normalization  
711 Van Ness Ave., Suite -350  
San Francisco, CA 94102

Dear Mr. Finkelstein:

Thank you for your letter of June 15, 2005. I share your optimism that the joint efforts of the Energy Commission and the California Public Utilities Commission (CPUC) to create a more efficient electric resource planning process will succeed. To that end, the Energy Commission is fully committed to meeting its responsibilities under the two Assigned Commissioner's Rulings issued in R. 04-04-003, on September 16, 2004, and March 14, 2005. However, I also believe that we can do so without sacrificing the important principles of accountability and public access in our resource planning decision-making.

For several years, the electric resource planning process for investor-owned utilities (IOUs) has been marked by a significant degree of secrecy. In this process, only a select few individuals are entitled to review and critique the data submitted by the IOUs which is the basis on which resource planning decisions are made. Although some non-market participants are allowed to review the data through the use of non-disclosure agreements and protective orders, others are denied access. The resulting scrutiny of assumptions and debate over alternatives is severely truncated. This shrouded process can only undermine public confidence in the regulatory decisions made in such an environment. I firmly believe that responsible and effective electricity resource planning can occur without excluding the public. In fact, our enabling legislation, the Warren-Alquist Act, specifically directs the Energy Commission to provide significant opportunities to the public in the development of the Integrated Energy Policy Report. (See, Pub. Resources Code § 25306)

Consistent with that statutory mandate and 30 years of experience with an open planning process, the Energy Commission has filed several sets of comments in CPUC proceedings encouraging the CPUC to consider allowing greater access to data in electricity resource planning proceedings. These comments have

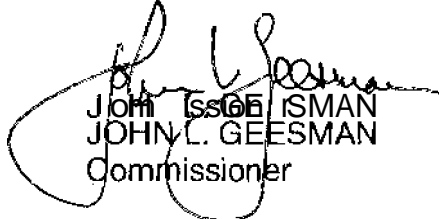
Mr. Robert Finkelstein, Executive Director  
Page 2

identified the significant benefits that accrue from rigorous **public** scrutiny of data and planning assumptions. I have enclosed these materials to better acquaint you with the Energy Commission's perspective and experience. More recently, the draft Energy Action Plan II (EAP II), developed by both the Energy Commission and the CPUG, identifies "the need to provide open, transparent, and compelling information and education to all stakeholders and consumers," and **pledges** to "remove remaining barriers to transparency in the procurement process in *the* State. . ."

Conversely, conducting policymaking by using information that is not publicly available hinders our accountability to the public, to the Legislature, and to the Governor. When we cannot discuss the information that underlies our **decisions**, we have lost the **ability** to be responsive to those **who** have a right to understand our decisions.

For the 2005 IEPR proceeding, it is critically important that the Energy Commission follow the guidance in our previous comments to the CPUC and embrace **the philosophy** of **the** draft EAP II. That means that for decision-making purposes, the IEPR Committee *will* not rely on information that has been withheld from public review and is not available for discussion at public workshops. You may **be** unaware that members of the Energy Commission do not have access to the confidential information that is the subject of your June 15 **letter**. You can be assured, however, that such information will have no evidentiary weight in the decisions made in the 2005 IEPR process.

Sincerely,



JOHN L. GEESMAN  
Commissioner

Enclosures

Mr. Robert Finkelstein, Executive Director  
Page 3

Cc: Chairman Joseph Desmond  
Vice Chair Jackalyne Pfannenstiel  
Commissioner James Boyd  
Commissioner Arthur Rosenfeld  
Commissioner Michael R. Peevey  
Commissioner Geoffrey F. Brown  
Commissioner Susan P. Kennedy  
Commissioner Dian Grueneich  
Commissioner John Bohn

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 96814-5512

April 16, 2003

Docket Office  
California Public Utilities Commission  
505 Van Ness Avenue, Room 2001  
San Francisco, CA 94102

Re: Docket R.01-10-024

Dear Docket Clerk:

Enclosed for filing in the above-entitled matter are the original and five copies of *the* California Energy Commission's Letter POLICY COMMENTS REGARDING R. 01-10-024: ALJ's Ruling Regarding Confidentiality of Information and Effective Public Participation addressed to President Michael R. Peevey, dated April 16, 2003, and signed by California Energy Commission Chairman William J. Keese. Please return the extra copy in the enclosed stamped, self-addressed envelope. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script, reading "Fernando De Leon".

FERNANDO DE LEON  
Attorney for the  
California Energy Commission  
1516 Ninth Street, MS-14  
Sacramento, CA 95814  
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Enclosure

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

R.01-10-024

Order instituting Rulemaking to Establish Policies and  
Cost Recovery Mechanisms for Generation  
Procurement and Renewable Resource Development.

**CALIFORNIA ENERGY COMMISSION'S LETTER**

FERNANDO DE LEON  
California Energy Commission  
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April 16, 2003

April 16, 2003

To facilitate effective collaboration between our two agencies on utility resource procurement, we are suggesting that you consider moving toward an approach for confidentiality that has worked well for us. In the Energy Commission's public forums, analytical and policy discussions benefit greatly from the rigorous public scrutiny of data and planning assumptions. Open debates of the differing views and perspectives of the many parties, including the public at large, have proven invaluable. We believe that, *for*

President Michael R. Peevey  
April 16, 2003  
Page 2

the State of California to foster a more workable electric industry, information should be available to the public whenever possible.

When parties ask the Energy Commission not to disclose their data we base our decision on a balancing of ~~the~~ public benefits of disclosure against the public benefits of non-disclosure, consistent with the Public Records Act. In our process, the party that asks to have information kept confidential bears the burden of showing that it should not be disclosed. For example, a party may request non-disclosure by claiming the trade secret exemption. Another example may be that a party could assert that the disclosure of data would ~~otherwise~~ cause competitive loss. In that case, the party must state the specific nature of the competitive advantage and how it would be lost, including the value of the information to the party and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Again consistent with the Public Records Act, the Energy Commission has established limited categories of data that it automatically designates confidential. For these instances, we have developed methods to aggregate or track confidential data so that the public may have access to information while protecting key private interests. This practice facilitates public debate about resource planning assumptions and other technical analysis used as the foundation for establishing energy policies in the state.

Eased on our recent experience, it appears that your agency's confidentiality policies start with the premise that the public should not have access to a great majority of data used in your proceedings, unless it can be demonstrated there are no undue impacts to the providing party.

I am advised that, in some instances, the **CPUC** has required the Energy Commission staff to enter into non-disclosure agreements so that they may represent the public meaningfully in CPUC proceedings. In these instances, our staff is unable to discuss any confidential details with management and Commissioners in developing Energy Commission input into these proceedings. There have been situations in which staff believes they have access to data that has far-ranging policy implications but they cannot fully discuss the implications with our Commissioners. However, if our Commissioners were to sign these non-disclosure agreements in order to be more fully informed, they could find themselves in an even more untenable position since the information they could provide to the Administration and Legislature on important energy matters would be severely limited.

To date, our Commissioners have chosen not to sign non-disclosure agreements, and we find ourselves having access to less information than our technical staff in preparing comments for your proceedings. This also means that we cannot

President Michael R. Peevey  
April 16, 2003  
Page 3

engage in detailed discussions with our fellow Commissioners **at** the CPUC in our collaborative efforts.

I believe both of our agencies benefit greatly from our collaboration on challenging energy issues facing the state. I urge you to explore **whether** you can use an approach to data confidentiality more consistent with ours. **We are** convinced that the most effective way to address California's energy challenges **is** with *more* transparency. We plan to file more detailed technical comments on confidentiality issues in the above-referenced proceeding later this week. We wanted to raise the policy issue of confidentiality with you at this time since **it is** a matter that should be resolved quickly and uniformly, and that will strengthen our collaborative efforts.

Sincerely,

A handwritten signature in black ink that reads "William J. Keese". The signature is fluid and cursive, with the first name "William" and last name "Keese" clearly legible.

WILLIAM J. KEESE  
Chairman

cc: Commissioner James Boyd  
Commissioner John Geesman  
Commissioner Robert Pernel  
Commissioner Art Rosenfeld

Commissioner Geoffery Brown  
Commissioner Susan Kennedy  
Commissioner Loretta Lynch  
Commissioner Carl Wood



CERTIFICATION OF SERVICE  
R.01-10-024

I, Carolyn Spears, certify that I have caused copies of the California Energy Commission's letter **POLICY COMMENTS REGARDING R.01-10-024: ALJ's Ruling Regarding Confidentiality** of Information and Effective **Public Participation**, addressed to President Michael R. Peevey, dated April 16, 2003, and signed by California Energy Commission Chairman William J. Keese, to be **served** by electronic mail on all parties who had e-mail addresses on the service list provided by the California Public Utilities Commission. I have also served copies of the above-referenced letter by overnight courier mail to the California Public Utilities Commission's Docket Office, President Michael R. Peevey, Commissioners Geoffery Brown, Susan Kennedy, Loretta Lynch and Carl Wood, and to Administrative Law Judges Christine M. Walwyn, Peter V. Allen, and Julie Halligan.

Dated: April 16, 2003, at Sacramento, California.

  
DECLARANT

(Service Lists attached to original only)

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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2003 APR 24 PM 5:52

CHIEF COUNSEL LITIG

Order Instituting Rulemaking to Establish Policies and  
Cost Recovery Mechanisms for Generation  
Procurement and Renewable Resource Development.

R.01-10-024

RECEIVED

2003 APR 24

CHIEF COUNSEL LITIG

**CALIFORNIA ENERGY COMMISSION'S POLICY AND TECHNICAL COMMENTS  
REGARDING R.01-10-024: ALJ'S RULING REGARDING CONFIDENTIALITY  
OF INFORMATION AND EFFECTIVE PUBLIC PARTICIPATION**

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April 18, 2003

## INTRODUCTION

The California Energy Commission (Energy Commission) respectfully submits these comments on the April 4, 2003, draft Administrative Law Judge's (ALJ) Ruling concerning confidentiality of data and information utilities will submit in their resource procurement filings. The Energy Commission offers these comments in response to the opportunity provided therein.

As noted in earlier filings, the Energy Commission staff participated in the discussions that led to the Joint Parties' March 19, 2003, report. However, ~~in~~ reviewing the Joint Parties' draft statement, the Energy Commission determined that it should offer a considerably different perspective about confidentiality relative to that of *the* Joint Parties. These comments provide that perspective.

In essence, the Energy Commission suggests that the California Public Utilities Commission (Commission) embrace a goal of greater public access to data and information in R.01-10-024. While we recognize that some data should be kept confidential, we believe that much of the data should be made available to facilitate an open, public debate. For parties to participate meaningfully in such a debate, they need greater access to the data and information that *will* form the basis of utilities' resource procurement. To facilitate this, we offer a framework that would lead to greater transparency while balancing the need *to* maintain a limited set of data and information confidential.

## BACKGROUND

To facilitate effective collaboration between our two agencies on utility resource procurement, we are suggesting you consider moving toward an approach for confidentiality that has worked well for the Energy Commission. In our public forums, analytical and policy discussions have benefited greatly from the rigorous scrutiny of data and planning assumptions. Open debate of the differing views and perspectives of parties, including the public at large, have proven invaluable. However, for this type of debate to occur, parties must have access to data and information. Because of the far-

reaching implications of decisions that will be made in this proceeding, we recommend the Commission facilitate an open, public debate. This will necessitate the Commission moving to a more transparent process in which data and information are available to the public whenever possible.

The Energy Commission has dealt with *the issue* of accepting and holding in confidence certain information. In making its determinations, the Energy Commission is governed by the California's Public Records Act. (Gov. Code, sec. 6250 et seq.) The Energy Commission's general premise is that data should be disclosed to the public, upon request, unless there is a specific reason not to do so. For example, the Energy Commission permits a provider of information to the Energy Commission to demonstrate that it contains a trade secret or that releasing the information would put *the* provider at a competitive disadvantage. In essence, any provider of information to the Energy Commission that seeks to protect its data must make an affirmative case for a confidentiality designation, stating the specific nature of the claim and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

In recent years, consistent with the Public Records Act, the Energy Commission has recognized that a few categories of data are inherently sensitive, and, by regulation, the Energy Commission has automatically designated these data confidential. The categories include individual consumption data (to protect individual privacy) and items such as fuel-cost data for individual electric generators and power plant-specific hourly generation data. In these cases, no party has to make an affirmative case for protection; however, the Energy Commission has developed methods of aggregating and masking confidential data *that* enables it to be publicly disclosed to facilitate the debate about planning assumptions and other technical analysis used as the foundation for establishing energy policies in California.

We understand that the Commission's practices with respect to electric and natural gas utilities are quite different from ours. In this proceeding, the Commission

has allowed utilities to designate materials confidential unilaterally, and any party seeking access to that data must make a case for its release.

In Phase 1 of this proceeding, parties negotiated a Protective Order to permit certain parties (non-market participants) to have access to broad categories of data that the utilities themselves had designated confidential. After intense negotiations, ALJ McKenzie issued three parallel Protective Orders allowing these parties to have access to a variety of forecast and resource-plan data, information about utilities' resource procurement strategies, and, ultimately, specific Request For Offers (RFO)-bidder and final contract-term data. In effect, parties determined to *be* "market participants" were denied access to confidential information.

Because of this approach, there has been no "public" debate concerning this confidential information. In fact, there has been very limited private debate about it since access to confidential information was so partitioned that only a few experts had any idea what had been filed and how the positions of the parties differed.

Phase 2 of this proceeding has taken a more open approach. ALJ's Walwyn and Allen have implemented a process for determining, in advance of utility filings, what information should be confidential and what information should be public. The discussions at the two prehearing conferences clearly supported greater public access to information than was allowed in Phase 1. The Joint Parties' report proposed much greater access than Phase 1 allowed. However, the Energy Commission believes it should go farther.

## **PROPOSED CONFIDENTIALITY RULING**

On April 4, 2003, ALJ's Walwyn and Allen released a draft ruling that they based on the Joint Parties' framework. The ruling proposed much greater access to data and projections than Phase 1 had permitted, and the ALJ's *Ruling* generally opted for a narrower confidentiality designation on issues on which the Joint Parties could not reach

consensus. The Energy Commission believes this narrowing of eligibility for confidentiality is a positive sign.

Nevertheless, the Energy Commission believes a much smaller set of data merits confidential treatment. As a general rule, the Energy Commission suggests that substantially more data should be publicly available when the utilities submit their filings. Moreover, for data which are confidential, the timeframe for its protection should be of a shorter duration.

Table 1 summarizes the major categories of data that the Joint Parties identified in their report, how the Joint Parties believe the data should be treated, and what ALJs Walwyn and Allen propose. The Energy Commission's alternative proposal is shown in the far right column.

In general, the Energy Commission recommends that planning "data" need not be classified as confidential. The load forecasts and the manner in which supply or demand resources meet that load are really only informed judgments, not actual data. Utilities claim that parties can combine load forecasts with resource data to identify their residual-net-short positions, somehow compromising the utilities' ability to obtain low-cost bids in RFOs. One could argue that a bidder will make its terms much more confining to accommodate the uncertainty about how the utility will call upon its generator if it becomes a part of the resource mix. Load and resource forecasts are important sources of information to the public's discussion of procurement issues. As such: the Energy Commission believes that the public benefit in disclosing this information outweighs most concerns regarding RFO impacts.

That being said: the Energy Commission does recognize that certain data should be kept confidential. For example, bids made in response to an RFO should be kept confidential until winning bidders are determined. Fuel prices for existing contracts should be protected to reduce the chance that bidders for new contracts will use these fuel prices to guide their own bids rather than bidding lower.

## OTHER CATEGORIES OF IMPORTANT INFORMATION

The Joint Parties' comments did not address the subject of utilities' resource procurement strategies. This is an important subject. Some fundamental questions arise to which the public should have specific answers. For example, should the public know that one California utility wants to satisfy a good portion of its needs by making spot-market purchases and using demand-response programs while another wants nothing to do with this strategy? After reviewing utilities' resource procurement plans, should the Commission impose a strategy it prefers or simply fine tune the strategy the utility prefers and about which few people know anything? The ALJ's ruling does not address these issues even though the Energy Commission's April 3, 2003, Prehearing Conference Statement raised them.

Table 2 addresses several types of strategic information. The Energy Commission suggests the Commission make some of this information public and other information confidential. For example, we recommend that the degree to which utilities expect to rely upon various types of new resources be made public. On the other hand, we recommend that the mechanics of bid evaluation for responses to RFOs, such as risk/reward ratios, be kept confidential until after a round of RFO bids has been completed, since to reveal this information might encourage bidders to game their bids to achieve specific numeric scores on particular figures of merit.

We note that under the existing non-disclosure agreements, the Energy Commission staff has been precluded from discussing confidential details with its own management and Commissioners, even when developing comments in these proceedings. The proposed changes are not likely to alter this situation—a situation that has proven to be very awkward because our staff believes certain *data* to which they have access have far-ranging policy implications that they cannot fully discuss with Energy Commission Commissioners. Although Energy Commission Commissioners or management could sign the various non-disclosure agreements in order to be more fully informed, doing so could put them in an even more untenable position, because the

information they could discuss with the Administration and Legislature: on important energy matters would be severely limited.

## **ACCESS TO CONFIDENTIAL DATA**

Once the Commission determines what data will be confidential and what data and information will be made public, the Energy Commission believes the current Protective Order, as modified to permit access by the California Independent System Operator, is an effective vehicle for preserving confidential data. The Energy Commission will abide by the terms of that Protective Order in Phase 2 as it did in Phase 1. If the Commission chooses to move toward more transparency in this proceeding, the difficulties the Energy Commission has already experienced with respect to the Protective Order, as noted above, are likely to be minimized or eliminated. This **would** greatly enhance the Energy Commission's ability to meaningfully participate in the proceeding.

## **CONCLUSION**

The Energy Commission urges the Commission to allow much broader access to utilities' resource procurement data and information. Informed scrutiny of resource procurement strategies and practices are critical. While non-market participants can make a significant contribution, members of the public and other interest groups can provide important additional insights, if allowed. We recommend that openness is a good strategy for addressing these important resource procurement issues.

April 18, 2003



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**Table 1**  
**Comparison Of Confidentiality Recommendations**  
**Joint Parties Proposal, April 4, 2003 Ruling, and CEC Recommendations**

<b>Data Category</b>	<b>Variable</b>	<b>Utility/Party Proposed Restrictions on Access</b>	<b>ALJ Ruling of 4/4/2003</b>	<b>CEC Recommendations</b>
Procurement and Fuel Purchase Plans	Forecasts of annual average natural gas price	Confidential up to three years into the future, public thereafter	Same as parties	Full Disclosure
	Forecasts of annual average on-peak and off-peak electricity price	Confidential up to three years into the future, public thereafter	Same as parties	Full Disclosure
	Forecasts of annual average, new generation cost	Confidential up to three years into the future, public thereafter	Same as parties	Full Disclosure
	Projections of DSM programs (annual avg energy impacts, annual peak demand impacts, annual costs of program admin, utility incentives and lost revenues.	Public, except that any inputs to cost effectiveness analyses that are confidential in their own right would remain confidential even though used in SPM calculations	Same as parties, but utilities are cautioned not to use the language to create any new restrictions on DSM data	Full Disclosure
	Electric procurement plans, fuel buying plans and hedging plans	Confidential	Same as parties	Fuel purchasing and hedging plans should remain confidential until superseded, then disclosed

Data Category	Variable	Utility/Party Proposed Restrictions on Access	ALJ Ruling of 4/4/203	CEC Recommendations
Resource Data	Forecasts of energy mix by percentage of major categories (URG, Q1, old world contracts, PPAs, DWR contracts, new world contracts)	Most parties agree to no confidentiality (SCE wants five years into the future) for this level of disaggregation, but any further level of disaggregation would be confidential	The aggregation of resources into the major categories is approved with no confidentiality time lag	Full disclosure
	Renewable resources	Deferred until renewable filings are made		Full disclosure except elements of RFO bids that might permit collusion among bidders
	Resources owned by affiliates	Deferred until contracts with affiliates are allowed	Power purchase agreements fully released unless as a result of a Motion they are ruled to be confidential	Full Disclosure
	Time-specific resource needs (peak day or other less than annual periods)	Confidential	Same as parties	Full Disclosure
	Natural gas used to generate power	Confidential	Same as parties	Confidential until one year after the period the was fuel used
	Individual PPAs	Confidential	Same as parties	Price and other terms confidential until PPA has expired, then all details public
Load Data	Annual and monthly energy sales forecasts including losses	Public	Same as parties	Full Disclosure
	Peak day load forecasts	Confidential	Same as parties	Full Disclosure

Data Category	Variable	Utility/Party Proposed Restrictions on Access	ALJ Ruling of 4/4/203	CEC Recommendations
Historic Data	Fuel buying and hedging information	<p>Total annual cost of gas and total volume of gas purchased released after two years(SCE)</p> <p>Total monthly cost of gas and monthly volume of gas released after three years (SDG&amp;E)</p> <p>Total monthly cost of gas and monthly volume of gas released after one year (TURN, ORA and PG&amp;E)</p>	<p>Monthly aggregate gas purchase costs and volumes are released after two years</p>	<p>Individual fuel purchase and hedging arrangements disclosed one year after arrangement has expired.</p>
	PPAs of length exceeding six months	Public two years after expiration date unless contract provisions require continued confidentiality	Same as parties, except that utilities are directed to attempt to negotiate release provisions and are strongly cautioned not to accept confidentiality	All provisions of new contracts procured as a result of a Phase 2 decision are public one year after the contract has expired. Name, MW size, fuel type, location of facility and other physical descriptors should be public information once contract is approved by CPUC.

**Table 2**  
**Recommended Release of Strategic Procurement Information**

<b>Data Category</b>	<b>Variable</b>	<b>Utility/Party Restrictions on Access in Phase 1 (or Phase 2 if Applicable)</b>	<b>CEC Recommendations</b>
General Strategy	Identification of specific uncertainties leading to risks	Classified confidential in Phase 1	Full Disclosure
	Quantification of risk and allocation to ratepayer or shareholder	Classified confidential in Phase 1	Full Disclosure
	Reliance upon various types of resources (EE, DR, shaped energy contracts, capacity contracts, new utility power plants, purchases from CAISO markets)	Classified confidential in Phase 1	Full Disclosure
Risk Management Plans	Use of hedging instruments (gas supply purchases, tolling arrangements, straight financial arrangements, etc.)	Classified confidential in Phase 1	Full Disclosure
Procurement Incentive Mechanisms	Principles underlying incentive mechanisms	SDG&E has been conducting public workshops pursuant to D.02-10-062	Full Disclosure
	Formulas to allocate cost responsibility relative to reference levels or benchmarks	Not proposed in Phase 1	Full Disclosure
	Escape conditions	Not proposed in Phase 1	Full Disclosure
Procurement Mechanics	Number, type and design of RFOs proposed to secure bilateral contract bids	Not disclosed in Phase 1 testimony	Full Disclosure
	Bid screening and evaluation techniques	Not Disclosed in Phase 1 testimony	Details for each RFO remain confidential until after all resources through acquired the RFO are approved by CPUC

Data Category	Variable	Utility/Party Restrictions on Access in Phase 1 (or Phase 2 if Applicable)	CEC Recommendations
	Contract oversight appropriate to ex ante review in lieu of prudency review	PRG processes were secret	Full Disclosure

### CERTIFICATION OF SERVICE

I, Carolyn Spears, certify that I have caused copies of "**CALIFORNIA ENERGY COMMISSION'S POLICY AND TECHNICAL COMMENTS REGARDING R.01-10-024: ALJ'S RULING REGARDING CONFIDENTIALITY OF INFORMATION AND EFFECTIVE PUBLIC PARTICIPATION**" to be served by electronic mail on all parties identified on the service list provided by the California Public Utilities Commission on or before April 18, 2003. I have also served copies of the above-referenced document by overnight courier mail to the California Public Utilities Commission's Docket Office, President Michael R. Peevey, Commissioners Geoffrey Brown, Susan Kennedy, Loretta Lynch and Carl Wood, and to Administrative Law Judges Christine M. Walwyn, Peter V. Allen, and Julie Halligan.

Dated: April 17, 2003, at Sacramento, California.

A handwritten signature in cursive script, reading "Carolyn Spears", is written over a horizontal line.

DECLARANT

(Service Lists attached to original only)

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO CA 95814-5512

February 27, 2003

Docket Office  
California Public Utilities Commission  
505 Van Ness Avenue, Room 2001  
San Francisco, California 94102

**Re: Comments of the California Energy Commission Concerning Data  
and Information Confidentiality, R.01-10-024**

Dear Docket Clerk:

Enclosed for filing in the above-entitled matter are the original **and** five copies of the 'COMMENTS OF THE CALIFORNIA ENERGY COMMISSION CONCERNING DATA AND INFORMATION CONFIDENTIALITY.' This filing has been served to all parties on the service list for these proceedings. We request that the extra copy of this document be file-stamped and returned for our records. Enclosed *is* a stamped, self-addressed envelope for your convenience. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Fernando de Leon', written over a horizontal line.

FERNANDO DE LEON  
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Enclosures

cc: Service List R.01-10-024

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish Policies and  
Cost Recovery Mechanisms for Generation  
Procurement and Renewable Resource Development.

R.01-10-024

**COMMENTS  
OF THE CALIFORNIA ENERGY COMMISSION  
CONCERNING DATA AND INFORMATION CONFIDENTIALITY**

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February 27, 2003



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

R.01-10-024

Order Instituting Rulemaking to Establish Policies and  
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**COMMENTS  
OF THE CALIFORNIA ENERGY COMMISSION  
CONCERNING DATA AND INFORMATION CONFIDENTIALITY**

**I. INTRODUCTION**

Pursuant to the Ruling of Administrative Law Judge (ALJ) Christine M, Walwyn at the Prehearing Conference in the above-captioned proceeding, held on February 18, 2003, and the applicable Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the California Energy Commission (CEC) submits its Comments concerning the treatment and availability of confidential, market-sensitive data in this proceeding.

In its statutorily mandated role, the CEC is obligated to collect and **assess** energy industry data, and obtain certain kinds of data from utilities and other energy industry participants, which the CEC uses in conducting its assessment and planning activities. Many of these assessment products are publicly released to inform the public and market participants as well as to permit a public debate about energy policies.

In addition, as a non-market participant and public entity mandated to provided energy information, the CEC was granted access to confidential,

market-sensitive data and information provided by the investor owned utilities (IOUs) in the first phase of this proceeding, according to the provisions of the May 1, 2002, Protective Order adopted by ALJ McKenzie. In addition, the CEC became a participant in the individual IOU procurement review groups (PRG) that were established to facilitate near-term IOU procurement.

## **II. REVIEW OF IOU FILINGS REGARDING CONFIDENTIALITY**

The CEC has reviewed the IOU filings submitted on February 24, 2003, and provides comment in this section.

In its filing, Pacific Gas & Electric Company (PG&E) essentially argues that no change is needed to the existing provisions of the Protective Order issued by ALJ McKenzie, and merely proposes that some data beyond five years be made available.

The Southern California Edison (SCE) filing echoes much of PG&E's filing. Like PG&E, SCE holds that five years is the dividing line, and that most information less than five years out cannot be disclosed. SCE also questions whether an ALJ ruling is the appropriate vehicle to determine confidentiality by asserting that Public Utilities Code section 454.5<sup>1</sup> requires "the Commission to adopt confidentiality rules that covered *a broad range of information* - including executed power agreements." (SCE Comments p.7.) Nevertheless, SCE admits that some portion of the data and information submitted in the first phase of this proceeding might be available to the public, especially if it is far in time and sufficiently aggregated.

The San Diego Gas & Electric Company (SDG&E) filing makes specific suggestions on how various classes of data should be treated. Furthermore, SDG&E expresses a willingness to make various forecast and supply information available to the public that are closer in time than the timeframes suggested by

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<sup>1</sup> Added by Stats. 2002, c. 835 (A.B. 57).

PG&E or SCE, For example, SDG&E is willing to have annual energy and peak demand information revealed for one year out.

### **III. CONFIDENTIALITY OF PROCURMENT AND PLANNING INFORMATION**

The CEC agrees with many **parties** in this proceeding that the IOUs *were* permitted to designate excessive amounts of data and testimony as confidential in the first part of this proceeding. The CEC believes that greater access to this type of information will permit an improved public policy debate and permit the Commission to render a well-informed decision. Even so, the CEC believes that there will remain a considerable amount of confidential data, including some --elements of IOU resource procurement strategies that should remain confidential.

#### **A. Data versus Information**

The CEC believes that a distinction can be drawn between two levels of what is commonly called data. Lacking a better term, we will use the terms "data" and "information" to illustrate our point. We define data as *the* fine bits of analyses or the details of individual contracts, while we define information as aggregations of that same data that provides a broad overall picture. One example of data is the heat rate curve of each powerplant under contract to an IOU. A second example of data is the burner tip price for a gas supply contract. A third example of data is the set of hourly loads that an IOU's bundled service customer expects in a calendar year. The information describing this set of data is the annualized residual net short (RNS) energy for the calendar year. Even if the hourly RNS values are classified as confidential due to their potential benefits to generators that could affect new contracts to satisfy IOU power purchase needs, we do not think that the information equivalent needs to be considered confidential.

Information can be aggregations of specific data or abstractions from the specific items of data that might provide business sensitive knowledge to bidders.

An example of this latter point follows. Clearly the nature of the terms and conditions of contracts that an IOU has already procured should not be released to the public because they could influence how generators bid in subsequent solicitations or other contracting opportunities. However, the fact that an IOU has entered into "X" contracts, amounting to aggregated "Y" amounts of energy on an annual basis, with a weighted average price of "Z" cents per kWh over the term of the contract seems sufficiently generalized that it does not provide any "data" to generators that will influence future contracting opportunities. In this case, the particulars of "X", "Y" and "Z" are so generalized from a set of contracts with different terms and conditions, with different periods and different dispatch requirements that we use the word "information" to describe the result, rather than the word "data."

The CEC believes that many kinds of data can be legitimately classified as confidential. Several examples of this type of legitimately confidential data were listed above. On the other hand, most information should be public. We believe this distinction is compatible with the frequently observed use of trade secret and proprietary information for classifying material as confidential as employed in the California Public Records Act. (Gov. Code, § 6250 et seq.) Anything that fails to meet this specific test would and should be made public.

Thus, the CEC supports a policy that protects market-sensitive data, but denies protection to information that is sufficiently aggregated or non-specific that it is not market-sensitive. Using the examples cited by the three IOUs in their February 24, 2003, filings, the CEC believes that hourly RNS would be classified as confidential, while annual aggregated RNS energy would be public. We believe that specific contract or bid information should not be released, but that broad aggregations of contracts can be released.

## **B. Strategies**

In the first phase of this proceeding, the IOUs were allowed to redact large portions of their testimony that contained only general descriptions of strategies they intended to pursue in forthcoming procurement activities. The CEC believes much of this "information" or strategy was inappropriately classified as confidential. Accordingly, we strongly recommend that comparable items submitted by the IOUs should be made public in the forthcoming phase of this proceeding.

An example illustrates this issue. One of the IOUs proposed in its testimony during the first phase of this proceeding to follow a procurement strategy that attempted to pursue a wide range of actions that reduced bundled service customer risks as long as the cost incurred by the action were less than the value of the risk. A very detailed quantitative methodology was proposed as the means to implement this strategy. Almost everything about this approach, not just its details, was asserted to be confidential by the sponsoring utility. The CEC believes the broad outlines of strategy that this IOU was proposing to pursue and the general nature of each of the risks they were attempting to mitigate should be made public, but that the specific details of the methodology to evaluate mitigation measures to overcome these risks remain confidential.

We do not see why general descriptions of risk and annualized estimates of annualized RNS energy consequences of a specific risk, or the impact of these risks on peak demand cannot be made public. Nor do we see why the general outline of a proposed strategy to guard against named risks cannot be made public. Unless this type of information is disclosed, there will be a little discussion about risks or mitigating strategies and the public and ratepayers will likely suffer.

The three IOUs essentially ignored the issue of the confidentiality of their strategies in their February 24, 2003, filings, but this is an important dimension of

the confidentiality concerns that parties are expressing to the Commission. Excessive use of confidentiality for procurement strategies will stifle important discussions of these strategies. For example, in the CEC's confidential rebuttal testimony filed concerning **SCE's** overall procurement strategy and the risks that SCE ~~was~~ proposing to hedge against, our testimony addressed only confidential sections of the SCE's testimony; thus, the rebuttal testimony had to be classified as confidential. When cross-examination was permitted, very few parties even knew that the **CEC** had filed this item of rebuttal testimony. Because SCE decided not to cross-examine the CEC witness, the issues we raised were not discussed in public and it is unclear whether our testimony affected the issues addressed in the proceeding. --

In the forthcoming phase of this proceeding, an examination of the strategies that the IOUs intend to follow in long-term procurement, the risks they intend to guard against, and the approach they believe are effective to achieve those ends should be **public**. Some specific details may be classified as confidential, but these broad outlines should be open for public scrutiny and debate.

#### **IV. PROTECTION OF DATA ONCE IT HAS BEEN CLASSIFIED AS CONFIDENTIAL**

In the Protective Order issued by ALJ McKenzie various measures were identified to ensure that confidential data remains confidential even though it is made available under limited conditions to certain parties. In general, the CEC believes that the approach developed there should be retained for this phase of the proceeding.

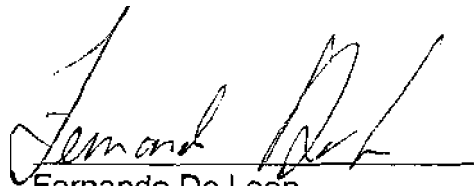
SB 1389 (Statutes of 2002, Chapter 568) modifies portions of the Public Resource Code dealing with the means by which the CEC can obtain and release confidential information received from another state agency.<sup>2</sup>

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<sup>2</sup> Public Resources Code § 25322(a)(3) and (b)(1).

## V. CONCLUSION

In short, the CEC strongly believes that there needs to be a distinction between truly market-sensitive data requiring confidentiality and aggregated information that can be made available to the public. In addition, we believe that the Commission should specifically address the extent to which strategies and descriptions of procurement strategies should be withheld from public debate and made confidential. Finally, whatever is ultimately decided about confidential materials, we believe that general **overviews** or summaries of documents should **be** written **so** that the contents of the confidential filings are summarized *in* a public overview, so that **the** scope of any confidential filing can **be** understood by the public.



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February 27, 2003

## CERTIFICATION OF SERVICE

Case Number **R.01-10-024**

I, **PAMELA EBBERT**, certify that on this day **February 27, 2003**, I caused copies of the "**COMMENTS OF THE CALIFORNIA ENERGY COMMISSION CONCERNING DATA AND INFORMATION CONFIDENTIALITY**" to be served on all parties by electronic mail who provided e-mail addresses for the identified service list, and also by mailing a properly addressed paper copy, by first class mail with postage prepaid, to all parties identified on the service list **provided by** the California Public Utilities Commission for this proceeding.

Dated: February 27, 2003, at Sacramento, California.



**PAMELA EBBERT**

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DECLARANT

(Service Lists attached to the  
original only)